

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 5th March, 2020

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Lusaka) in the Chair]

PRAYER

NOTICE OF MOTION

PROVISION OF CEMETERY, FUNERAL PARLOURS AND CREMATORIA IN ALL COUNTIES

he Temporary Speaker (Sen. (Dr.) Lelegwe): Your time is up. Proceed, Sen Olekina.

Sen. Olekina: Mr. Temporary Speaker, Sir, I rise to support this Statement by Sen. Mwaruma in regards to the use of textbook centres and also the system leading to the centralization of everything in this country.

What I would like the request the Committee on Education to note is that even though education for secondary schools is not fully devolved, it is high time we looked at how county governments can develop their education systems. The Ministry of Education should develop the policy and then each county government comes up with their own textbooks. This way, we will help young entrepreneurs in the education sector to get jobs in different counties.

If we do not do this, we will continue centralizing everything. Everything will come from Nairobi and it will be owned by cartels. It is about time to rethink everything, as we talk about the Building Bridges Initiative (BBI). I am sure that earlier on you were talking about the Land Use Policy but now we are talking about the issue of education.

In terms of education, there is nothing that stops county governments. Why do we have County Executive Committee (CEC) members in charge of education? I know that the Constitution only devolves early childhood education, but I think it is about time for the Ministry of Education to figure out how to guide schools in the counties, so that they develop their own textbooks centres.

I know that we had the Office of the County Attorney Bill which was focusing on setting up a county office. We also had the Office of the County Printer Bill. Why can we not then develop systems where each county can be given a department that only produces textbooks that will be suitable for the students in that environment?

I find it a bit hypocritical when you expect a child from an affluent neighbourhood to compete with a child from a village like the one I grew up in. It is about time the Committee on Education engaged in serious consultations with the Ministry of Education. If we transfer functions of an entire county like Nairobi City County, why can we not transfer these functions of education particularly printing books by the counties, so that we can ensure we that we have a balance?

Sen. Mwaruma has said that a lot of books are stuck in libraries and yet those schools do not even have computer laboratories or laboratory facilities. We need to balance this out.

Mr. Temporary Speaker, Sir, as I support this Statement, I hope that the Committee will think outside the box in line with the kind of sentiments that I have shared on how we can ensure that we support these institutions.

I thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon Senators, I have a communication to make.

(Interruption of debate on Statement)

COMMUNICATIN FROM THE CHAIR

VISITING DELEGATION FROM NGINDA GIRLS
SCHOOL, MURANG'A COUNTY

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting teachers and students from Nginda Girls School, Murang'a County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and my own behalf, wish them I fruitful visit.

I thank you.

(Applause)

Proceed, Sen. Cherargei.

(Resumption of debate on Statement)

ALLEGED EXTRA-JUDICIAL KILLINGS OF YOUNG
KENYANS IN NAIROBI CITY COUNTY

Sen. Cherargei: Thank you, Mr. Temporary Speaker Sir, for your indulgence. Before I issue my Statement, I join you in welcoming the beautiful girls from Murang'a County and wish them the best as they continue to learn.

Mr. Temporary Speaker, Sir, I had promised the House that I would report back on the issue of extrajudicial killings and enforced disappearances in the country. I have a Statement pursuant to Standing Order 51(1) of the Senate Standing Orders, relating to a matter for which my Committee is responsible.

Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order 51(1) to make a Statement on an issue for which the Committee is responsible, namely the inquiry by the Committee into extrajudicial killings and enforced disappearances in Kenya.

As Senators will recall, during the Sitting of the Senate held on Thursday, 20th February, 2020, the Senator for Nairobi City County, Sen. Sakaja, issued a Statement under Standing Order 47(1), on the extrajudicial killings of young Kenyans in Nairobi City County. This followed the shooting, earlier that week, of Mr. Daniel Mburu, a *boda boda* operator in Embakasi, Nairobi, who was shot at the Mama Lucy Hospital after rushing to the hospital a young girl who had been rescued from drowning in Korogocho River.

At the time, I provided an update on the inquiry which the Committee on Justice, Legal Affairs and Human Rights was undertaking on extrajudicial killings and forced disappearances in Kenya. I undertook to provide a status report on the matter within two weeks.

Mr. Temporary Speaker, Sir, extrajudicial killings refers to the arbitrary deprivation of life by government authorities or individuals, without the sanction of any judicial proceeding or legal process. These executions include deaths resulting from torture or ill-treatment in prison or detention and death resulting from enforced disappearances or excessive use of force by law-enforcement officials among others.

Enforced disappearance is defined in the International Convention for the Protection of All Persons from enforced disappearance as “arrests, detention, abduction or any other form of deprivation of liberty by agents of the State, persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Article 26 of the Constitution guarantees every Kenyan the right to life. It specifically states that a person shall not be deprived of life intentionally. The Constitution in Article 48 further requires the State to ensure access to justice for all persons. Article 49 sets out the rights of arrested persons. It grants to every person the right to a fair hearing, including the right to be presumed innocent until the contrary is proved. Article 51 of the Constitution further sets out the rights of persons detained, held in custody or imprisoned.

Extrajudicial killings and enforced disappearances present a grave affront to the Constitution and the administration of justice, in that persons profiled or suspected to have committed crimes are summarily executed without being subjected to the benefit of a fair trial, where evidence may be presented against them and the opportunity to rebut such evidence granted.

Cognizant of its mandate, as set out in the Standing Orders of the Senate, I am pleased to inform the Senate that the Committee has since undertaken site visits and met stakeholders in Mombasa and Kwale counties. The Committee also held a sitting in Nairobi where it met and engaged with human rights, civil society organizations such as Amnesty International, as well as the Independent Policing Oversight Authority (IPOA).

The preliminary observations and findings of the Committee disclose serious gaps in law and in enforcement of the law that have allowed these heinous practices to continue.

These include-

(1) The non-operationalization of the National Coroners Services Act, 2017 and the Prevention of Torture Act, 2017. Despite the President assenting this into law, these two laws have never been operationalized.

(2) The failure by the Inspector-General (IG) of the National Police Service (NPS) to formulate and gazette regulations on the use of force and firearms, as required under the National Police Service Act. We have to note that there are no regulations in place on the use of force and firearms, and that is why some of these firearms are being leased to be used to commit crime.

(3) Overlaps of mandates between the IPOA and the Directorate of Criminal Investigations (DCI) when it comes to investigating cases of arbitrary and unlawful use of lethal force by police officers. The police investigate themselves through the DCI, yet IPOA has been given oversight authority to investigate. Therefore, that was a big challenge because in Kiswahili we say; "*Mganga hajigangi*." That is why we find police officers investigating.

It was also shocking that the IPOA admitted that they send evidence to ballistic experts, who are police officers. You will remember that there was a police officer who was accused of killing someone in Kisumu but because of change of the serial number of the firearm, that police officer went scot-free.

(4) Lack of independent oversight mechanisms. Kenya Wildlife Service (KWS), Kenya Forest Service (KFS), National Prisons Service and the Kenya Coast Guard Service do not have oversight through the IPOA.

(5) Refusal and/or failure by police officers to cooperate with the IPOA during investigations into extrajudicial killings, including in making available documents, reports and evidence that would be necessary in ensuring full investigations are undertaken.

This is very serious because police who are killer cops operate an online account called 'Hessy Cops' where they post individuals that they kill. I am told that in Eastlands there is a *Probox* that is driven around, and young men are rounded up and taken to a particular police station or petrol station and summarily executed.

We were told that between February last year and this year more than 210 Kenyans have been killed through the bullet by trigger-happy police officers. These are very sad statistics that we have as a country.

(6) Failure by police officers to comply with service standards, including in identifying themselves whenever they are carrying out an operation, and ensuring that all police records and registers are correctly, properly, timely and accurately entered, updated and kept.

We were being told of police officers who do not even report to their Officer Commanding Station (OCS) or Officer Commanding Police Division (OCPD). They report to some senior police officers in the country, which is not in line with the police command that has been provided by law.

It is sad that if one is shot by these killer cops, they have to be paid for the bullets used. For example, if they use seven bullets, they have to be paid for the seven bullets. In the slum areas, especially in Eastlands and some parts of Nairobi, they have to be paid Ksh3,000 per bullet. So, if your kin was killed by the killer cops, they tell you that since they used seven bullets, for example, you must pay Ksh21,000.

We were told of cases where the police even disrupt burial committee meetings and ensure that they do not happen. We were even told that some of the killer police officers were caught on camera executing people in broad daylight. They even go ahead to intimidate witnesses.

Our witness protection programme in this country is not as expected. Therefore, they go ahead to intimidate and harass people. What shocked us is the case where some of the killer police have a list. They could come to your house and tell you: “We will kill your brother if you do not pay us Ksh10,000.” That is what is happening in parts of this City and country.

It is so sad and those are very heart-wrecking stories that we were told. I hope that the law is still applicable. The right procedure is to arrest somebody and take them to a court of law, and let the judicial process be followed to conclusion.

Mr. Temporary Speaker, Sir, the Standing Committee on Justice, Legal Affairs and Human Rights plans to continue with its inquiry into this very serious matter and present its final report later during the current Session. I want to ensure the Senators that we shall be tabling our report in the next one or two months.

Among the activities the Committee are-

(1) Site visits to areas within Nairobi City County. We were given areas and police stations, like Kamukunji among others, where these killer cops are known by the public. I cannot mention names here now, but the letter will give the details. We are supposed to visit areas affected by forced disappearances, among them Mathare, Huruma, Kamukunji, Eastleigh, Dandora, Kayole, Mukuru, Korogocho, Kibera, and Githurai.

We also intend to visit some of the police stations. I think Eldoret Central Police station was mentioned among many others. There is a specific petrol station that was mentioned, I think it is called Amana, where they take young people. The killer police officers are so dangerous. Allegedly, they have a *Probox* where they stock weapons. After killing, they use *pangas* and machetes and smear the victims with blood.

(2) Meeting with the Attorney-General, the Chairperson and Members of the National Police Service Commission, the Inspector General of the National Police Service, Mr. Hillary Mutyambai, the Director of Public Prosecutions, Mr. Nordin Haji, the Director of Criminal Investigations, Mr. George Kinoti, and the Chief Registrar of the Judiciary.

They were not able to attend, but on 23rd May, we will meet so that we finalise on our report. On 18th we will go around Nairobi and also visit Kisumu, specifically, Kondele and Nyalenda. We shall also visit Garissa and Mandera in North Eastern to deal with issues of forced disappearance in the guise of fighting terrorism.

(3) Site visits and meetings with stakeholders in Garissa, Kisumu, Eldoret, Nyeri and other areas of interest to the inquiry.

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this inquiry. Further, it wishes to thank stakeholders who have so far appeared and made submissions before the Committee.

As I conclude, it is so sad when you listen to stories of women whose children have been forced to disappear at the Coast. It is sad to listen to people who have lost young sons and daughters in this City because of trigger-happy police officers. It is so sad because it is like it is a crime to be poor and young in this country. When you are poor

and young, between 14 and 30 years, and live in the slums in this country, you are likely to be killed by the bullets of the trigger-happy police officers.

It is so sad because the age between 14 and 30 years is the time a person should be more productive to the country. However, it looks like it is dangerous to be poor and young in this country. There is a case at the Mombasa Kenya Defence Forces (KDF) outpost where someone was killed. These are some of the issues we are talking about. We have heard of many mothers who have lost their daughters and sons in Mombasa and North Eastern parts of this country.

Mr. Temporary Speaker, Sir, we urge the Inspector General (IG) of Police and other stakeholders to arrest these individuals, make them face the law and undergo judicial processes. Let us not take life because under Article 26 of the Constitution, the right to life is very important. I assure Members that, as a Committee, we are on top of things.

As I conclude, this Report will not be sufficient because the matter looks more dangerous and lethal. What will resolve this issue of extrajudicial killings and forced disappearances in this country is to form a commission of inquiry to look into it.

I wish I had time to elaborate. There are many cases that have been taken to court involving quite a number of police officers, where people have been shot even after surrendering. It seems as if there is a silent order to shoot to kill in this country that has been issued without the attention of the public. We were even told of a case in Mombasa where a young man had surrendered and knelt. The police went ahead and sprayed him with seven bullets and then planted “evidence” beside him.

We need a more concrete approach to this issue, so that we can resolve it once and for all. We continue to empathize and condole with many families that have become the victims of police brutality and lost their loved ones. We hope that the Witness Protection Programme by the Attorney-General will try and address some of these issues.

I thank you, Mr. Temporary Speaker, Sir, your office and the Senators for this opportunity. I promise that we shall, in the next one or two months, table our final report as the Senate Committee on Justice, Legal Affairs and Human Rights.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Wamatangi.

Sen. Wamatangi: Thank you, Mr. Temporary Speaker, Sir. I congratulate the Chairperson of the Committee on Justice, Legal Affairs and Human Rights for that Report. They have undertaken to try and help get to the bottom of this big menace in this country that has been with us since Independence. We cannot debate or discuss this matter as if it is a problem that is just occurring now. It has lived with us all the way through from the days of Pio Gama Pinto, J.M. Kariuki and Dr. Robert Ouko.

The problem continues to the latest days where the young men of Kiambu County have been picked and rounded up in villages, such as Uthiru in Kikuyu town and Kabete, and then in a few days, discovered in a forest in Limuru and Lari. They are dumped there in bundles and bunches of 12 each.

I have seen mothers, fathers, brothers and sisters agonize over the disappearance of their young ones. We have to congratulate the Committee, but also condemn in equal measure the continued practice of not only torture, but also execution.

As I speak, yesterday and the day before, in Ruiru, Kiambu County, there was a demonstration because we have one of our young men who was a *boda boda* rider who is missing. The practice has been most of the time that when somebody goes missing, the

next time there will be a message saying: “Go and look for that person somewhere in a mortuary.” I have firsthand experience in this. You will be instructed to go and look around in hospitals if you are the parent. If you do not find them in a hospital, you will go back to the police station and be told to go back and search in the mortuary. As you go around, you will be directed further to go to the City Mortuary itself and alas! You will find your son there with either bullet wounds or if not, clubbed or bludgeoned to death.

Mr. Temporary Speaker, Sir, I do not know whether Members of this House followed a serialization that was in *The Daily Nation* the other day. A retired police officer was telling a story that happened in his presence. He had accompanied two officers of the now defunct Flying Squad. The officers were pursuing robbers without having gone through proper judicial procedure. In that serialization, those robbers were captured somewhere between the border of Kenya and Tanzania.

The writer, to his amazement, was telling about the methods that were being used to extract information from these young men. One police officer invited them to sit and have a word with him. He was asking them: “*Ehe!* So you steal cars, you do this---” All of a sudden he turned with lightning speed and broke a bottle of soda on the knee of the suspect. His knee joint and cap splintered like plastic, and that is a human being. That man was musing at how, again, they ferried that fellow in that pain without the benefit of even a doctor, all the way up to Nairobi in the rear of a Land Rover.

I am saying this because a friend of mine the other day lost his son. When he disappeared some while back, he sought my assistance. We went round and looked all over. It is only after about two weeks when he was asked to go and find his son who was said to have been last seen in the same place I have mentioned in Ruiru, near a police station. We found the son at the City Mortuary with bullet wounds. What is most amazing is that there will be no explanation wherever you go. You go to this police station or the other, and nobody knows what happened to the person. At the end of the day, your son or brother is dead by being shot. Your work is to go and collect the body, bury it and ask no questions. That is something we cannot condone anymore.

I do not want to take so much time on this since Members have a lot to speak about. Sometime back, because I operate a business here in Nairobi, some individuals, a lady and a man, were sitting at my business premises sipping a soda and having a chat on an afternoon. I will not necessarily mention their names. After a while, they crossed the road to go to a shopping centre at Nairobi West. From there they were never seen again. People looked for them for a while. The next day, the lady was discovered strangled somewhere in Ngong Forest. The man was also discovered somewhere nearby killed in the same method; a bullet wound and strangulation.

For how long will this go on? What is the use of this Constitution if in its most basic it cannot be obeyed? What is most troubling is that, and I say this with tremendous respect to our security forces especially to the police---- I know very good police officers who have reformed since the advent of our Kenya Constitution, 2010.

We know that there are particular IGs of police who have occupied that office since then who have taken seriously to reform. We know that the Independent Policing Oversight Authority (IPOA) has done the best they could. However, there are unrepentant radicals in our police force who have continued to think that human life can be treated with the contempt that they have treated it for all this time. This must come to an end.

Mr. Temporary Speaker, Sir, I think this House, as proposed by the Chairperson of the Senate Committee on Justice, Legal Affairs and Human Rights, must also take a position. When families are pursuing justice after losing their people, the voice of legislators must be heard. When we leave a poor man in a village to follow the mighty force of the police and there is determined effort to block any evidence, this continues to be a cycle.

Can this House be heard? Can lawyers in this House and the Committee on Justice, Legal Affairs and Human Rights itself be heard? I congratulate lawyers in this country, like Dr. John Khaminwa, who have, on several occasions, volunteered to give *pro bono* services. They have given their services freely to families and victims who have suffered greatly in the hands of unrepentant officers, who have been otherwise entrusted by our law, armed by the taxpayers' money and by the same victims that they murder; they should protect and give us security. This is a very painful subject to discuss, especially coming from Kiambu County, where several of our young people have been victims.

Mr. Temporary Speaker, Sir, when we had the purge on the group that was christened *Mungiki* in Kiambu, yes, that group was a menace to the community around Nairobi and the Mt. Kenya region. However, the indiscriminate manner in which young people were picked and killed *en masse*--- Sometimes a police officer would go to a mother and tell them to their face, "tell your children to watch out," yet there was no system of establishing that their son, daughter or brothers belonged to this group. True to their word, they would disappear that evening, never to be seen again. Mothers went crying all over to police stations saying, "please, please, please, do not---" We have to say no to this at the end of the day.

Mr. Temporary Speaker, Sir, I congratulate the Committee; let that position be taken. I understand that there is a similar cry all over the country. Let justice prevail because we have a new Constitution and a legal system. We cannot have a legal system without a justice system; the two must go hand in hand.

Thank you, Mr. Temporary, Speaker, Sir.

(Interruption of debate on Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM PIONEER GIRLS SCHOOL,
MURANG'A COUNTY

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I have a Communication to make. I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Pioneer Girls School, Murang'a County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

(Resumption of debate on Statement)

Proceed, Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Temporary, Speaker, Sir. I join you in welcoming the students from Murang'a. I encourage them to feel welcome. Your Senator does not seem to be here, but we will speak on his behalf and welcome you.

The Statement that has been made by the Chairperson of the Committee on Justice, Legal Affairs and Human Rights is very important. In this country we have had a checkered history on the observance of human rights. Kenya has been routinely cited by Amnesty International, United Nations (UN) bodies, the European Union (EU) and local human rights bodies for non-observance of the respect for human rights and life.

In the olden days – and I am sure that my distinguished colleague from Siaya County, Sen. Orendo and others, would remember - there was a white policeman in this country who used to shoot people on sight and at will. He was called Robert Shaw. When we were students at the university, if you heard that Robert Shaw was somewhere in town, it was a curfew imposed on students.

(Laughter)

This has unfortunately gone on even long after the death of Robert Shaw. It is not Robert, but Patrick Shaw. Robert Shaw is a columnist in the newspapers.

Mr. Temporary Speaker, Sir, when the current Inspector General (IG) came to our Joint Committee with the National Assembly for vetting, I asked him a question about extrajudicial killings. He said, in his words: "That is going to be history. I am going to deal with it firmly and you will never hear of it anymore." We are, in fact, hearing of it now more than ever before; young people are tormented and arrested.

We have no difficulty in fighting crime. We have no difficulty in arresting people where they have transgressed the law. However, subject them to due process; take them to court. I remember three years ago when President Uhuru told the country that Kenya is now almost meeting its quarter of police to population ratio. That means that we have enough policemen and women to control crime, to the extent that you do not have to resort to brutal force and criminality in the name of fighting crime. The Constitution is very clear.

Mr. Temporary Speaker, Sir, when we enacted the 2010 Constitution, we changed the name of the police from a force to a service. The police used to be called a force, and they were notorious for brutal force. There was a squad that used to be called FFU or *Fanya Fujo Uone*. That was part of the police. We have removed 'force' and we are now a service; *Utumishi kwa Wote*, and not *Ukatili kwa wote*. If you go to Majengo and other places that the Senator for Kiambu County and the Chairperson have been counting, you will meet horror stories. Mothers there would tell you how their sons were taken away and castrated, or how their sons were taken away and never seen again. One mother in Majengo told me, "I have two sons, and they have both been castrated by the police. Now they are just there like the Ethiopian eunuch of the Bible."

Mr. Temporary Speaker, Sir, this country has to change. Crime does not help the country because it retards development, but when it is being committed by the watchers,

then the lawyers ask: who will watch the watchers? Like the Chairperson said, where the police transgress the law, it is unlikely that they can investigate themselves.

In Uganda, the Baganda have a saying, “*Ekima etesala kwa kibila;*” meaning that a monkey cannot be trusted to investigate the affairs of the forest, because that is where it lives. It cannot, therefore, investigate or sit on a panel to abolish the forest. It cannot work! The Independent Policing Oversight Authority (IPOA) was created specifically because of these transgressions. Unfortunately, every roadblock has been put in their way. Every frustration has been visited on them until they are not able to investigate.

The Temporary Speaker (Sen. (Dr.) Lelegwe): What is it, Sen. Farhiya?

Sen. Farhiya: Mr. Temporary Speaker, Sir, the Senator has spoken a foreign language, and he never sought your permission to do that. I think that is against the Standing Orders.

Sen. Wetangula: Mr. Temporary Speaker, Sir, the distinguished Senator is still on a learning curve. When you quote something and explain what it means, our Standing Orders allow that. I said that the Baganda have a saying that, “*Ekima etesala kwa kibila;*” meaning that a monkey cannot investigate the matters of the forest. That is perfectly in order under our Standing Orders. Let me go on.

The IPOA was meant to oversight the police to look at these transgressions, but they have been unable to function. We have the Office of the Ombudsman headed by a former Member of Parliament (MP) called Hon. Kajuju. It is also unable to function. These are constitutional offices with budgets that are supposed to be doing some important work. The Office of the Ombudsman is run by lawyers, but I do not see any cases going to court on the harrowing situations that Sen. Wamatangi and the Chairperson have been describing.

Mr. Temporary Speaker, Sir, I encourage the Chairperson of this Committee and your office to invite the IG to come to the Committee of the Whole House. You should invite those who work with him, including IPOA, to come and tell us why we budget money for them when they cannot work. This country has gone through a terrible history.

The late Tom Mboya was gunned down on the doorstep of a shop opposite Corner House. The Government repeatedly told Kenyans that the late hon. J.M. Kariuki was at the Hilton Hotel in Lusaka, Zambia, while he was in Ngong Forest being eaten by wild animals. The late Dr. Robert Ouko disappeared and the Government told Kenyans that he took a flight to Gambia, but he was found in Got Alila Hill half burned. The Government attempted to tell Kenyans that he had committed suicide. How does a person commit suicide and set himself on fire?

Mr. Temporary Speaker, Sir, when we highlight the late Tom Mboya, G.M. Kariuki, Pio Gama Pinto and Dr. Robert Ouko, they are people in our brackets. What about the ordinary man or boy in the streets whose name nobody remembers? Every time a child is missing and the parent is frantically looking for them everywhere, they receive a phone call telling them to try the mortuary, and the truth is that they will find their son's body there.

The law is clear. If there is a menacing criminal, the police are legally allowed to use a firearm to disarm and disable, but not to kill. The Chairperson will have to ask the Inspector-General of Police to give him a catalogue of how many suspected criminals have been shot to disarm and disable. Police cannot possibly shoot a person to disarm and disable by aiming at the head or heart. That is not disarming and disabling.

Mr. Temporary Speaker, Sir, this country has made major strides in human development. Our only setback is non-observance of human rights, non-respect to human rights and non-respect for the freedom of people. Therefore, I urge the Government to change this trajectory.

You hear what happens to young Muslim boys in Mombasa or in Northern Kenya, where a child leaves to buy something and they never see him or her again. Today, we keep on seeing in the newspapers that Tsavo National Park is now a dumping ground for bodies, including that of Mr. Yebei who was abducted in Turbo and his body found in Tsavo National Park. To date, nobody tells or explains to us who killed him or how he left Turbo to be found in Tsavo National Park. We have other forests, for example, Boni Forest, which has a lot of security problems, and nobody knows how many bodies have been dumped there.

Like the late hon. Martin Shikuku said, may his soul rest in eternal peace, when they dumped the late J.M. Kariuki in Ngong Forest with the hope that hyenas would eat him, even the hyenas knew that he was too respected to be eaten. They did not touch him.

Mr. Temporary Speaker, Sir, we must change. This House, as a defender of counties and the dignity of human beings of this country, must turn up together as one.

When I hear the Senator for Kiambu County talk the way he did, while knowing his record of blindly defending the Jubilee regime in this House, I know things are not well.

(Laughter)

Sen. Wamatangi: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Lelegwe): What is it, Sen. Wamatangi?

Sen. Wamatangi: Mr. Temporary Speaker, Sir, I have a lot of respect for the Senator for Bungoma County. I was in concurrence with all the things that he was saying. However, he knows that I am not a blind man. At least, my record is clear that I did not come here as a disabled person representing the disabled and neither have I shown any signs that I could be losing my sight since I came here. Is he in order to describe my conduct or the Motions that I have tabled as those that point to a blind man's action by saying that I blindly defend the Government?

My record is clear. I am not only objective, but also principled. I speak facts and what is there. I have never been a bootlicker. So, if blindness in his view constitutes what I do, with due respect, the Senator for Bungoma may be twice as blind.

Sen. Wetangula: Mr. Temporary Speaker, Sir, it was with a light touch. The distinguished Senator for Kiambu County touched my heart when he was speaking about the young people who have been killed in his constituency and beyond. However, truth be told, and Sen. Orengo can bear me witness, in the last Parliament, when you spoke about the Government, you would have thought that you have electrocuted Sen. Wamatangi. He would limp and attempt to stand up to stop you. However, nowadays, he has transformed from Saul to Paul. We welcome him to be objective, critical and help the people who elected him.

Congratulations my brother for speaking well. If the people of Kiambu heard you, they might make you a governor.

(Laughter)

Mr. Temporary Speaker, Sir, I finish by encouraging the Committee on Justice, Legal Affairs and Human Rights to bring monthly or quarterly updates to this House on the status of violations of human rights and killings that are not justified. They cannot be condoned and must be condemned with the same display of courage and depth.

I stop there because I am sure my colleague from Mandera also has a story to tell about the disappearances of children and young persons in the hands of the people who are paid from the taxpayer's money to protect them.

Mr. Temporary Speaker, Sir, in the olden days and even now, when you go to a country like United Kingdom (UK) or Sweden, when you have a problem and you see a policeman, your problem is half solved. However, in Kenya, when you have a problem and you see a policeman, your problem doubles.

(Interruption of debate on Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM THANGIRA UMOJA
SECONDARY SCHOOL, MURANG'A COUNTY

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I have a Communication to make.

I would like to acknowledge the presence, in the Public Gallery, this afternoon, of visiting students and teachers from Thangira Umoja Secondary School in Murang'a County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

(Applause)

Sen. (Eng.) Maina: Thank you, Mr. Temporary Speaker, Sir. I would like to briefly welcome the students who have visited this House. I would like to tell them that as young people, they should be confident that one day they will be in this House and may be, become the top leaders of this country. They should aim higher and trust in God. They should always remain disciplined and keep away from any misdirection and dangerous things, for example, drugs which pose a danger to them.

(Resumption of debate on Statement)

Mr. Temporary Speaker, Sir, I support what the Committee on Justice, Legal Affairs and Human Rights has done. The issue of extrajudicial killings has been historical in the country. A country like Kenya, which has a disciplined force, should not be witnessing these kinds of things. The issues of extrajudicial killings are happening all over.

*[The Temporary Speaker (Sen. (Dr.)
Lelegwe left the Chair]*

*[The Temporary Speaker (Sen. Pareno)
in the Chair]*

At times I have been misunderstood when the youth are branded without any recourse in law and kind of sentenced. One time, I had to personally face a team of inquiry as a Member of Parliament (MP) because I stood firm when about 30 youth died mysteriously. When I faced the inquiry team, I told them that as far as I was concerned, we are in a country where the youth do not have employment, but still we educate more and more. As long as they are not engaged, as a society, we have to tolerate what is happening. The solution is not to brand them the way we do.

Madam Temporary Speaker, I have always held and still hold that position to this day because in my community, branding is still there. I think it is in every community. We have a group in Kisii and I have also heard of *Baghdad Boys* in Nairobi. That is branding of the youth.

We abide by the rule of law, and we are progressing. I do not want to say that Kenya should be on the same standards of the European and Nordic countries where even the Prime Minister walks on the streets and earns a humble salary. We are yet to get there. We are a developing country and have to move at our own pace.

Nevertheless, life is dear. I think one of the Commandments of the Almighty is: “Thou shall not kill”. What causes this? The security forces should relook into it because one thing is true. For example, in Nyeri, there is a spot where bodies are always found. Surely, it cannot be by accident. How many people have guns? Extrajudicial killings continue happening and we always talk about them. People always listen to you when you talk, but nothing is done.

I want to put a rider to this. Honestly, in this country, how much do we pay our security forces and especially the policemen and women? How much do we pay primary school teachers? We need equality and equilibrium of things if Kenya is going to be a civilized. Why am I saying this? We need to make an assessment.

How much do we pay our policemen and women, teachers and doctors? Sometimes newly graduated doctors are posted to some places. At times they work overnight attending to casualties when accidents occur. We make laws in this Parliament. When you are elected or nominated, you focus on benefiting yourself without caring about policemen and women, teachers and doctors. We need to be careful because this is causing dissatisfaction amongst our people.

Madam Temporary Speaker, allow me to mention this at this stage. Currently, our policemen and women cannot rent houses anywhere they want. We know of a case of some young man who died – I do not want to say that he was killed – in some estate somewhere. If this country is serious, it must ensure that its uniformed forces are taken care of through housing and everything. The salaries they are given should motivate them, so that they hold moral ground.

We will be cheating ourselves if we underpay people like our policemen and women, teachers and doctors. If we do not pay them well, they will be tempted to do other misadventures, like some of the things we are discussing here because we do not know the causes of extrajudicial killings. The causes are many. They could be political or

economic because of the society we are living in. We must relook back and make sure we have a country that---

Sen. Wetangula: On a point of information, Madam Temporary Speaker.

Sen. (Eng.) Maina: Madam Temporary Speaker, I do not need information because I have enough information on this subject, unless the person has something that comes from some sphere.

The Temporary Speaker (Sen. Pareno): Hon. Senator, I do not know how you know what he has to say. I think it is good that you give him a chance to tell you what he wanted to inform you.

Sen. Wetangula: Madam Temporary Speaker, I want to inform my distinguished colleague from Nyeri that there cannot be any reasons for extrajudicial killings. An extrajudicial killing is unlawful, period! You cannot assign any reason to it. It is just a crime, period!

The Temporary Speaker (Sen. Pareno): Sen. (Eng.) Maina, I guess you will agree with him.

Sen. (Eng.) Maina: I agree with him, but there is something I want to tell him. A human being behaves in the manner the society has modeled him. I am not condoning, but when we frustrate our security forces that are armed without knowing their mental capacity---

We have cases where security forces shoot one another, something that was not common in the past. No one condones extrajudicial killings. All we need to do is to ensure that our young boys and girls in security forces and teaching faculties are well catered for.

Madam Temporary Speaker, I also wish to inform the Ford Kenya Party Leader here that as they continuing finding ways of making Kenya a better place, they should remember to bring up the issue of inequality that I am talking about, because there are disparities in this country.

You will find somebody who is earning Kshs3 million per month. Compare that with a policeman who earns Kshs16,000 and a teacher who earns Kshs12,000 per month. What society are we creating?

Madam Temporary Speaker, let us come back to the issue of extrajudicial killings. We have had these extrajudicial killings in the history of this country. We have had cases of people like J.M. Kariuki, Pio Gama Pinto and others who died or disappeared. Therefore, we must condemn these kinds of killings. I want to ask the Committee to unearth whatever has happened. More so, I would request the Committee to go deeper and look at the causes of these killings. There must be a reason our society behaves in such a manner. Let us not just come out, record what is happening, condemn it and leave it at that. I would urge the Committee to go deeper and find out the likely causes of this kind of behavior in our society, because it was not there in the past. There are things that have become more pronounced.

Secondly, let us not try to think that laws will make us better as a country. I am getting amazed at the number of times we draft laws. I am sure that even regarding this issue of extrajudicial killings, we are going to resolve to come up with another law to deal with it, just as we have been saying that we should look for laws to make sure that corruption is eradicated in Kenya. We already have beautiful laws in our Constitution. Let them be followed to the letter, and Kenya will be a better place.

Madam Temporary Speaker, the major problem we have is thinking that we need another law each time. I sincerely hope that the Building Bridges Initiative (BBI) will come with up with very good structures. We already have very good laws. I have never understood why, today, a person who kills somebody goes to court and he is given a bond or bail. He then goes back to the same village to threaten witnesses and relatives of the person he might have killed because he was given a bond. This is the kind of freedom we need to relook at.

Madam Temporary Speaker, some of these extrajudicial killings maybe happening because people know that they will not get justice in courts. They, therefore, resort to these kinds of killings. A society whose population cannot put food on the table, cannot find drugs in a dispensary and where education is a preserve of those who are endowed with wealth, is one that contributes to extrajudicial killings because of frustrations.

It is true that our people in most places can hardly place a meal on the table. I would wish that we address these things as we also address other freedoms we are looking for. Kenya is a great country that is endowed by God. Let us take Kenya back to where it was. There used to be a time when a Kenyan could travel anywhere in the world. We never needed a visa to go anywhere in Europe or America. Today, you are turned upside down in every airport you go. Whenever I go to South Africa I feel a bit depressed because of the kind of questions that one is asked. You are asked: "When are you going back?" I wonder; do they think I want to go to their country to stay there?

(Laughter)

Therefore, let us create the Kenya that we knew, where cattle, wheat, and sheep used to be transported by train from Nanyuki. A country where the Maasais used to deliver their cattle to the Kenya Meat Commission (KMC) and they would be paid on the spot and go back home.

Let us relook and create the Kenya that we knew. Let us go back and create a Kenya that God meant to be, that is, a country with good soil, rainfall and sunshine all year round. We should actually be importing workers because we have enough to pay them, and our children are all well catered for.

Thank you, Madam Temporary Speaker.

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me this opportunity. I wish to thank the Chairperson of the Committee on Justice, Legal Affairs and Human Rights for doing a good job. People are learning about extrajudicial killings in this country. Other than the case of prominent personalities like Dr. Robert Ouko, who unfortunately during the time of his death his daughter was in my class, and we all mourned with her--- The rest of the country now faces extrajudicial killings.

Madam Temporary Speaker, where I come from, from the time of Independence we have experienced the extrajudicial killings in the name of *shiftas*. Tribal clashes also continue to occur and people are killed as a result of that. Currently, we are facing the *Al Shabaab* militia menace. Our region has faced extrajudicial killings. This issue of people disappearing continues to happen on a daily basis where I come from.

We had a case where 5,000 people died in a week. People who had been put in a concentration camp were left to become dehydrated, and they starved to death. That was

very inhuman! You can imagine, in that scorching heat of 40 degrees Celsius; people were being kept in the sun for three days with no food or water. They ended up dying in large numbers. I lost four relatives in that massacre, and up to today, nothing has been done about the Wagalla massacre. There has been no compensation.

Madam Temporary Speaker, even this time, we will talk about the extrajudicial killings, vent and rant about it, but after all is said and done what happens? We are here as representatives of counties and also of special interests groups. However, if all we do is rant and lament about what is happening and nothing is done about it, we are going nowhere.

A case in point is Mr. Daniel Mburu, the man who took somebody to hospital and then he was shot dead. This man should have been recognized as the hero of the community for saving someone's life, but he ended up being killed. The biggest problem we have in this country is lack of implementation of laws. We should start fearing and respecting the laws we have in this country. We can have all the beautiful laws, but if they are left to rot in the shelves, then all of us are wasting the taxpayers' money passing those laws. The rule of law is very important for any civilized society to progress. We are being told of cases of the police killing people. We pay the police their salaries using taxpayers' money.

Much as we understand that they are paid less, that is something else you can address. However, life is important and all of us need to protect it. Therefore, there is no excuse for anybody to take away somebody's brother, husband, son, uncle, niece *et cetera*. That person who falls down as a result of the bullet is somebody's relative; they do not need to die.

Madam Temporary Speaker, I support this Report. However, let it not be one of those reports that are just noted without an outcome. Otherwise, we would be wasting our time talking about it.

I thank you.

Sen. Olekina: Madam Temporary Speaker, I rise to support this Report and make a few comments in terms of what we need to do to ensure that we have a balance.

I was listening to Sen. Wamatangi explaining how most youth disappear. I know that in this country, historically, many armed groups are usually employed by politicians. We are the ones who take advantage of the poor people. So, when the police go out there and try to ensure that the rule of law is followed, some of the youth who are used to intimidate others end up being locked up in the penitentiary somewhere.

Even though there have been so many cases of extrajudicial killings, what are we doing as politicians and businesspeople in this country, who want to control certain quarters, to contribute to that? We must ask ourselves these questions. I was very happy to hear Sen. (Eng.) Maina asking serious questions as to how we are treating these police officers.

I have been on the record saying that the minimum salary that a police officer should get in this country should be Kshs100,000. When you travel to countries like Singapore, you will not see a police officer on the road. However, when you see one, they will be working peacefully and will not bother you. If there is a crime, they will be able to go there. It is a bit hypocritical when we lament on a daily basis that there are so many people being killed, yet we in this House are the ones who come up with legislations and

fight for more money for ourselves, yet we do not give a hoot about the police. Even our own bodyguards, the ones who protect us, get peanuts, and we do not care.

Sometimes I ask myself whether these police officers do not have families. I hear people complain so much about the police being allowed to rent houses. If you see the kind of dilapidated houses they live in, you ask yourself how we are supposed to have a sober nation, where people will respect the rule of law and shrewd businesspeople and politicians will not take advantage of the youths; where everybody will have an opportunity to grow and become responsible citizens. If we cannot practice what we preach, the buck stops backs with us.

I want to challenge the Chairperson of the Committee on Justice, Legal Affairs, and Human Rights legal who gave his Report. Yes, the Independent Policing Oversight Authority (IPOA) was set up to deal with various issues. They include to investigate deaths and serious injuries caused by police action, monitor, review and audit investigations and action by the internal affairs unit of the police and to conduct inspection of police premises, among many others.

Madam Temporary Speaker, I want to inform the Committee on Justice, Legal Affairs, and Human Rights that on 14th February, 2020, on Valentines Day, there was a special Gazette Notice which designated police stations countrywide. The first thing we need to do is to ensure that when we are talking about a budget, in most cases--- I am happy the Chairperson of Committee on Finance and Budget is here, we can say in this Senate that we know where 10 per cent goes, which is the Kshs360 billion, but we do not know where the 90 per cent go.

When we get into these discussions, since I am seeing that we will end up going into the issue of mediation, the fast thing we need to ask ourselves is: What does the Constitution say in Article 203, in terms of the priorities when the budgets are coming out? This time round we have designated police stations countrywide. In Narok East we have two of them, we have Ildamat police station. You can look at that Gazette Notice and get the coordinates to know where it is. There is also Suswa police station, but let us ask ourselves: In this Budget, how much is being put in there to ensure that the welfare of these police officers and the premises which we are sending the IPOA officer to go and inspect are actually fit for that police officer to be there?

Madam Temporary Speaker, last week, I happened to be arrested and ended up in Kilimani police station. I looked at the police station and the neighborhood; affluent, a concrete jungle with many big buildings worth billions. I looked at the condition of the police station that is supposed to provide security for the people and wondered. We then come here and blame the police for extrajudicial killings, tell them that they are the cause of all these things and call for reports on human rights. What about their own rights? These are the questions that we must ask in this country. If we want proper leadership, we have to ensure that those who are tasked with the responsibility of protecting us---

The Temporary Speaker (Sen. Pareno): Sen. Olekina, I hope you are not implying that the police have a right to do extrajudicial killings, even if their conditions are not well taken care of. Their rights are similar to those who are killed. I hope that is not what you want to go on record.

Sen. Olekina: Madam Temporary Speaker, what I want to go on record is that, in this country, we are hypocrites. Particularly, we as leaders, do not care about the people who are supposed to protect us. I am not saying that it is their right for them to kill. In my

earlier submission I indicated very clearly that historically in this country, the businesspeople and police officers are the ones who hire armed groups. Sen. Farhiya was talking the youth disappearing on a daily basis. Historically, if you go back to 1964 to 1967, even the *Shifita* warriors were funded by the Somali Government, when the Northern Frontiers wanted to secede. Even today, the *Al Shabaab* are having a field day because in this country, we have got our priorities mixed up.

Madam Temporary Speaker, as we blame the police for extrajudicial killings, the IPOA which has been set up constitutionally has got no teeth. We must ask ourselves: How are we empowering them? I was listening to Sen. (Eng.) Maina talk and what he said is true. For example, a shrewd businessman would go to Maasai land and buy cows cheaply. A Maasai will go and sell meat to the Kenya Meat Commission (KMC), but will never be paid. However, this shrewd business person would get cows sold to him cheaply and use a police officer and a few youth and control the entire system. That same shrewd officer will ensure that person who supervises that department does not pay other people, so that they do not do that business.

To finalize, when the Committee is looking at this, prevention is always better than cure. I would challenge the Chairperson of Committee on Justice, Legal Affairs, and Human Rights his Members to visit the current police stations and ask themselves whether they can stay there. I do not want to explain or give details of the kind of experience that I had in Kilimani police station. I am happy that the Chairperson of the Committee on Justice, Legal Affairs, and Human Right was there and can attest to what I am saying.

We need to champion for better welfare for the police officers and continually encourage them through training. I am sure Sen. Kihika will attest to the fact that in other jurisdictions, veteran officers are supported. The men and women in uniform are supported when they are on duty. When such officers retire, they are given everything because people appreciate what they have done.

Madam Temporary Speaker, in conclusion, I challenge the Chairperson of the Committee on Justice, Legal Affairs and Human Rights to get a copy of the *Special Gazette Notice* dated 14th February, 2020. I am sure it will excite him to know that all those police stations are gazetted and will hopefully be built. I hope that we can begin to appreciate what the officers in this country do for us.

I thank you.

The Temporary Speaker (Sen. Pareno): Kindly proceed, Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, I thank the Chairperson of the Committee on Justice, Legal Affairs and Human Rights for bringing this statement to the Senate. Extra-judicial killings and enforced disappearances have become a norm in this country. Whereas our Constitution has a Chapter on the Bill of Rights which is very elaborate and guarantees everybody the right to life, there is something wrong in the way we enforce the law.

Extra-judicial killings and enforced disappearances happen in the hands of the people who are supposed to enforce the law and protect our citizens. Secondly, crime and terrorism is there, but that is not a reason to harass and injure innocent Kenyan citizens. The police officers have no reason to shoot the people that they perceive as criminals without investigations. Police officers sometimes defend extra-judicial killings as acting in self-defence. However, what constitutes self-defence is debatable.

Madam Temporary Speaker, a lot of crime is committed by our police officers in the name of fighting the Al-Shabaab. Security personnel such as officers attached to the Anti-Terrorism Unit, military unit and many others are responsible for the enforced disappearance. I hope that the Committee on Justice, Legal Affairs and Human Rights will go to the bottom of this issue and get solutions to extra-judicial killings and enforced disappearances.

The people who are supposed to safeguard Kenyans are making us insecure. It has been argued that the welfare of police officers is not well catered for, but it is not the mistake of the people who end up as victims of extra-judicial killings. I agree that the welfare of police officers needs to be looked into, but that is not a guarantee for them to do extra-judicial killings.

Northern Kenya as well as many other parts of Kenya have a bad experience with the security personnel in the name of fighting terror. The independence of the Independent Policing Oversight Authority (IPOA) that is supposed to be investigating such incidences is not guaranteed. The victims of extra-judicial killings and enforced disappearances are at the mercy of police officers to investigate whatever crime is committed by fellow police officers.

Madam Temporary Speaker, the interim report by the Committee on Justice, Legal Affairs and Human Rights signals some light at the end of the tunnel. As the Committee will be going around the country, I urge them to sample counties in every region so as to get conclusive solutions on how to deal with the menace of extra-judicial killings and enforced disappearances.

I salute the Chairperson of the Committee on Justice, Legal Affairs and Human Rights and his Committee. I appeal to the security agents who are in charge of the security operations of this country to be mindful of the lives of Kenyans. The police officers should not be shooting people aimlessly as was the case at the Mama Lucy Hospital. We should not condone trigger-happy police officers.

The report by the Truth Justice and Reconciliation Commission (TJRC) made recommendations on the issue of extra-judicial killings and enforced disappearances, but it is yet to be implemented. We demand for the implementation of the TJRC report. We have our priorities wrong as a country. We are currently busy discussing the Building Bridges Initiative (BBI) report, but it will not solve all our problems. Extra-judicial killings and enforced disappearances need to be solved by the institutions that are mandated to solve them. The amount of time that we are spending on the BBI report should be cut down so that we deal with serious issues that are facing this country.

Madam Temporary Speaker, I thank you.